

**A G E N D A**  
**MAINE LAND USE REGULATION COMMISSION**  
**Maine Forest Service Bolton Hill Facility**  
**2870 North Belfast Ave. (Rte. 3)**  
**Augusta, Maine**  
**May 12, 2004**  
**8:30 AM**

Page No.	Staff		Action
<b>ADMINISTRATIVE MATTERS</b>			
<b>Introductions</b>			
<b>1</b>		<b><a href="#">Minutes</a> of March 31, 2004 Commission Meeting</b>	Decision on Acceptance
	Peggy	<b>Proposal for Recording Minutes of future Commission Meetings</b>	Information
	Catherine	<b>Director's Report</b>	Information
		<b>Election of Officers</b>	Decision
<b>PLANNING MATTERS</b>			
<b>6</b>	Fred	<b><a href="#">Clearing standards for development</a></b> , authorize rulemaking	Decision
<b>16</b>	Fred	<b><a href="#">Update on rulemaking</a></b> , floodplain rules, clearing for development, statewide forestry standards	Discussion
<b>PERMITTING AND COMPLIANCE MATTERS</b>			
<b>18</b>	<b><a href="#">EC 03-109</a></b> Don	<b>Northwoods Partners</b> , excessive clearing, filling, and grading within 75' of Second Wallgrass Lake and 9' from a property line, St. John Plantation, Aroostook County	Ratify Settlement Agreement
<b>30</b>	<b><a href="#">BP8976-C</a></b> Billie	<b>Valeria Peterson</b> , request for variance to the Commission's minimum road setback requirements for the construction of a garage, Madawaska Lake, T16 R4 WELS, Aroostook County	Decision
<b>38</b>	<b><a href="#">DP4360-C</a></b> Billie	<b>Monhegan Historical and Cultural Museum Association</b> , request for variance to the Commission's minimum property boundary line setbacks for the construction of an addition to the museum, Monhegan Island Plt., Lincoln County	Decision
<b>48</b>	<b><a href="#">ZP 687</a></b> Billie	<b>Derek Monson and the Staff of the Land Use Regulation Commission</b> , rezone approximately 25 acres from (P-SL) Shoreland Protection Subdistrict, (P-RT) Special River Transition Subdistrict and (P-WL) Wetland Protection Subdistrict to (M-GN) General Management Subdistrict, Aroostook River, Oxbow Plt., Aroostook County	Decision

**Continued on next page**

PLEASE NOTE - The Commission will interrupt the agenda for lunch at 12:00 and may adjust the agenda to take items out of order.

- |   |  |          |
|---|--|----------|
| 58 <a href="#"><u>DP 4689</u></a><br>Marcia | <b>Nestle Waters North America, Inc.</b> , request for a public hearing, commercial spring water withdrawal and pumping facility, Pierce Pond Twp. and Spring Lake Twp, Somerset County. | Decision |
|---|--|----------|

**OTHER MATTERS**

- |                       |  |            |
|-----------------------|--|------------|
| Catherine<br>10:00 am | <b>Land acquisition activities and Conservation Easements</b> , a panel discussion with Karin Tilberg and Ralph Knoll of the Maine Department of Conservation, and Tim Glidden of the Land for Maine's Future Program, to speak on the state's achievements and current initiatives on land acquisition for conservation, and conservation easements and how they affect the Commission. | Discussion |
| Catherine<br>1:00 pm  | <b>Overseers of the Unorganized Territory</b> , a panel discussion with the fiscal administrator, the supervisor of property tax, and the superintendent of schools of the unorganized territory; and the administrators from the Aroostook County Commissioners Office on their responsibilities to the residents of the unorganized territory.   | Discussion |

**Commissioner Comments**

**Adjourn**

Minutes of the  
**MAINE LAND USE REGULATION COMMISSION**  
Regular Monthly Meeting  
Sunday River Inn and Cross Country Ski Center  
Newry, Maine  
March 31, 2004  
1:00 PM – 4:20 PM

**Commissioners Present:**

E. Bart Harvey, Chair  
Rebecca Kurtz  
Steve Kahl  
Ed B. Lavery

Carol A. Murtaugh  
James A Nadeau  
Steve W. Wight

**LURC Staff Present:**

Catherine M. Carroll, Director  
Scott Rollins, LURC Division Manager  
Fred W. Todd, LURC Division Manager  
William Galbraith, Environmental Specialist IV

Larry Casey, Regional Representative  
Marcia Spencer-Famous, Sr. Planner  
Peggy Dwyer, Resource Administrator  
Lisa Philbrick, Clerk Typist III

**Members of the Public:**

PLEASE NOTE - The Commission will interrupt the agenda for lunch at 12:00 and may adjust the agenda to take items out of order.

Karen Tilberg, Deputy Commissioner, Dept. of Conservation  
Phyllis Austin, MEEPI  
Diano Circo, Natural Resources Council Maine  
John Cannizzaro, Saddleback  
Mark Berry, Saddleback

Irene Berry, Saddleback  
Nan Berry, Saddleback  
Bill Berry, Saddleback  
Tom McAllister, Saddleback  
Jeff Pidot, Attorney Generals Office

Note: Commission votes are recorded in the following order: number voting in favor of a motion – number voting against a motion – number abstaining – number absent.

## **MINUTES OF FEBRUARY 11, 2004 COMMISSION MEETING**

The Commission voted 4-0-3-0 to accept the minutes as presented, based on a motion made by Ed Lavery and seconded by Steve Wight.

### **DIRECTOR'S REPORT**

#### **Poland Springs (Nestle Waters North America Inc.)**

Catherine informed the Commission that an application was submitted from Poland Springs (Nestle Waters North America Inc.) requesting permission for a pumping station in Pierce Pond Township. The 1.4 million dollar project would include two production wells with a small building around each well, a paved driveway with a turn around, a building to house the electronic equipment to run the facility, and an underground pipe running from the two production wells pump station. It was stated that the facility would not be a bottling plant, but would instead be used to fill trucks to ship the water to Poland Springs' existing bottling plant. Catherine noted that the staff would complete the processing of the application in April. The Commission requested that a report be sent out to the Commission to keep them informed on the review of the application.

### **LEGISLATIVE NEWS**

**Legislature** - The Land Bond issue and supplemental Budget are keeping the legislature busy. The Legislative session is beginning to wind down and they are expected to adjourn in the middle of April.

**Jet Ski Bill** - The Jet ski bill died due to the fact MDIFW didn't want to take on the task of reviewing petitions to prohibit personal watercraft use on surface water bodies.

**LD1671 Atkinson Bill** – This bill has been passed in House, but is still sitting in the Senate. The Atkinson Bill gives SAD 41 (Milo) power to approve Atkinson students to attend school other than Dover. The Bill is stalled at the moment due to schooling issues.

**LD 1925 Act to change name of T17 R5 WELS to Cross Lake** – This act is to change the name of T17 R5 to Cross Lake. It is sponsored by Representative Rosaire Paradis.

**LD 1617 Liquidation Harvesting Subdivision Bill** – This bill passed in both houses and prohibits subdivisions that convert the primary use of land from timberland to non-timberland use in situations when being subdivided has changed ownership in the 5 years preceding the subdivision application, when the

subdivision would convert the primary use of land from timberland to non-timberland exceeds 100 acres alone or, in conjunction with other similar divisions created within 5 years out of the same parcel of land that resulted in conversion of the primary use those subdivisions from timberland to non-timberland use. This bill applies to subdivisions reviewed by the Maine Land Use Regulation Commission and applies to subdivision reviewed by a municipal reviewing authority. Catherine stated she would be coming back at a later date to further explain the impact of this legislation on the Commissions jurisdiction.

**LD 1858 Clearing For Development** – Catherine explained that the Legislature is expected to make certain changes to the so-called “point system”, clearing of vegetation within the 100 foot shore land buffer. The amendments come from recommendations made by a work group’s evaluation of the point system. The group advised changes in the methodology to accurately reflect the variety of natural forest conditions and various sized trees within the buffer. The revisions include increasing grid size to reduce the effort of the land owner while still maintaining a well distributed stand of trees, maintain near shore buffers in perpetuity, and provide an incentive to ensure a number of smaller trees will be retained. The new law included adding a new class of tree sizes, allotting more points for larger trees, and prohibiting aggressive elimination of tree species that are more than three feet high but less than two inches in diameter. These amendments are considered to be routine and technical and will not require substantive rule making. The staff will be proposing a rule change to the commission to adopt these changes.

**2004 Calendar** - Catherine proposed to maintain the schedule the Commission has been working with for several years. A draft of the 2004 calendar was presented for the Commission’s consideration, with the fact known that the locations are subject to change with hearings and site visits. It was discussed that the meetings were convenient to the commissioners.

Up-coming events include:

- ★ Catherine will be out of the office the week of April 12<sup>th</sup>.
- ★ The Annual Water Conference will be held on April 21<sup>st</sup>. A member of the LURC staff plans to attend.
- ★ Steve Wight will be out of the Country in the month of May
- ★ The next regular meeting will be located in Augusta on May 12, 2004 to tend to regular business and to meet the rest of the staff.

**Election of Officers** – Catherine noted that it had been a year since there was an election of officers. The Commission asked that this item be placed on the next meeting’s agenda.

## **INDICATORS**

Division Manager Scott Rollins presented the March permitting statistics. 82 permit applications were accepted for processing, and 82 permits were signed. There are 160 applications pending.

Scott also went over historical permits pending. Scott also mentioned the abundance of pending applications Rangeley had due to the fact that they were short staffed with such a high demand in the area. Catherine pointed out that some of the Augusta staff were processing applications for the region, the reason being that the regions were short staffed. Steve Wight suggested tracking the larger projects by putting them into their

own category of indicators. Steve also asked to have the affected waterbodies listed in the Weekly Pending Applications report.

## **PERMITTING AND COMPLIANCE MATTERS**

**DP 4131 - Saddleback Land And Timber Corporation and Saddleback, Inc.,** Final Development Plan approval (Phase 1), Saddleback Lake, Rock Pond, Midway Pond, Haley Brook, Rock Pond Stream, Dallas and Sandy River Plantation, Franklin County.

Senior Planner, Marcia Spencer-Famous gave a presentation and explained the proposal that was submitted by the applicants, Saddleback Land & Timber Corporation and Saddleback, Inc., The applicants requested approval of the Final Development Plan, which is based on the activities listed in the Preliminary Development Plan (1994). The applicants requested final approval for: (a) uses and activities allowed without a permit; (b) uses and activities requiring notification and annual reporting; (c) existing uses and structures, including several uncompleted activities authorized under older permits that will soon expire; and (d) clearing of trees for six new ski trails. An 18-month time extension until October 1, 2005 to obtain approval for the remainder of the Final Development Plan was also requested.

Marcia gave an overview of the (D-PD) Planned Development Subdistrict process and how the (D-PD) Planned Development Subdistrict (Section 10.14,C of the Commission's Land Use Districts and Standards) is established by the Commission on a case-by-case basis for very large development activities that would be located in areas containing sensitive natural resources. It was stated that establishing the D-PD Subdistrict and authorizing the Development Plan is done in a two-part process designed to create a development and management plan while protecting natural resources. Time limitations for submittal, review, and approval of the various stages of the process are built into the provisions of Section 10.14,C, including 18 months for the Final Plan to be approved after the Preliminary Plan is approved, and 24 months after the Final Plan is approved for the project to be substantially started. Marcia then went on to explain the summary of administrative history in detail. After reviewing the uses and activities proposed for the Final Development Plan and associated decision documents and files, the staff recommended that the Commission approve the proposal.

A lengthy discussion followed regarding clarification of the project; concerns regarding mud season and the effect on soils in the area; the ten year period to complete the project; and the process if any person was aggrieved by the decision. The topic of any person aggrieved by the decision raised concerns that construction activities could be done during the 30-day period. Bill Galbraith affirmed that once permission is granted the permittee can conduct the permitted activities during the appeal period.

The Commission then voted 7-0-0-0 to approve the Final Development Plan for DP 4131 on a motion made by Steve Wight, seconded by Ed Laverty. After the discussion was made by the Commission on the Saddleback development permit, Catherine announced that the staff was currently reviewing a pending amendment application submitted by Saddleback in late March for the reconstruction of the existing base lodge. Catherine explained that the rules of the Commission allow the staff to process amendments to the final development plan that are not a material change. Catherine expressed her determination, after careful consideration with the staff and the applicant, that the pending amendment application for the lodge reconstruction would be a minor change to the final development plan and that the staff expected to complete processing the application before the end of April. Catherine assured the Commission that the proposed lodge

reconstruction and 6,000 square foot expansion would be conducted from the same footprint as the existing lodge, would be connected to the existing infrastructure which is already in place and sized to serve the proposed building. Additionally, the new lodge would be below the 2700 ft elevation and outside the viewshed of the Appalachian Trail. Catherine noted that the staff has been working extensively with the applicant and interested parties on the review of this application and does not anticipate there will be significant concerns from the interested parties. Catherine however did say she would bring this amendment application to the Commission for their consideration should concerns be raised.

**ZP 685 - Jarrett J. Staton, rezone 1.5 acres from (D-RS) Residential Development Subdistrict to (D-GN) General Development Subdistrict to allow the development of a commercial storage space rental business, Highland Plantation, Somerset County.**

The petitioner sought approval to rezone 1.5 acres of his 3 acre parcel from (D-RS) Residential Development Subdistrict to (D-GN) General Development Subdistrict to develop a commercial storage space rental business. The proposed rental storage building would provide seasonal visitors with a place to store their recreational equipment (snowmobiles, ATVs, boats, camper trailers, etc.) during periods of the year when they are not in use.

The staff believes that the proposal will have no undue adverse effects on surrounding uses and resources and will be consistent with the provisions of the Comprehensive Land Use Plan as follows:

- The area proposed for rezoning is located within a (D-RS) zone that already consists of other low intensity commercial and institutional developments.
- Plantation officials and local business operators have confirmed the demand for recreational use of the area and lack of availability of such rental storage capacity and that the proposed business would enhance the local economy.
- The proposed development utilizes an area of previously disturbed and developed land, and fully complies with the Commission's requirements for such a development.

The proposed rezoning meets the statutory criteria for redistricting under the provisions of 12 M.R.S.A. section 685-A (A-8) of the Commission's statutes. The staff recommended that the Commission approve the petitioner's proposal.

Rebecca Kurtz sought clarification of the setback from the stream. Bill Galbraith assured her that the setback was in compliance with the Commission's standards. After the discussion, the Commission voted 7-0-0 to approve ZP 685 on a motion made by James Nadeau, seconded by Steve Kahl.

**OTHER MATTERS**

**St. John River Trip** - To end the day, Fred invited the new commission members to attend a St. John River trip May 17<sup>th</sup>, 18, and 19<sup>th</sup>. Senior Commission members have been already been invited.

**DP 4618 – JoeWalsh** - Catherine announced that a lawsuit has been filed on the Commission's decision of appeal of Development Permit DP 4618. The staff is currently preparing the Court's record. Catherine said she would provide copies of the lawsuit to the Commission Members and keep them posted on the outcome of the lawsuit.

The meeting was adjourned at 4:20.

Respectfully Submitted,

Lisa S. Philbrick  
Clerk Typist III  
LURC

## **MEMORANDUM**

May 12, 2004

**TO:** Commission Members

**FROM:** Catherine M. Carroll, Director

**SUBJECT:** Commission Meeting, Wednesday, May 12, 2004 in Augusta

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Enclosed please find the materials for the May 12, 2004 Commission meeting which will be held at Maine Forest Service Bolton Hill Facility, 2870 North Belfast Ave. (Rte. 3) in Augusta, Maine. The meeting will start at 8:30 AM.

Please call or e-mail Peggy if you need a room reservation. Her e-mail address is [peggy.dwyer@maine.gov](mailto:peggy.dwyer@maine.gov).

If you have any questions or issues regarding the agenda, please feel free to call me before the meeting. I look forward to seeing you on the 12<sup>th</sup>.

Enclosures

## MEMORANDUM

May 3, 2004

**To:** Commission Members

**From:** Frederick W. Todd, Mgr., Planning and Administration Division, LURC

**Re:** Standards for Vegetative Clearing

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The legislature has recently directed the Commission to amend its vegetative clearing standards so as to be consistent with recent changes to the Natural Resources Protection Act. This is the culmination of a process started about 3 years ago. A brief history follows.

### Background

In 2001, the legislature directed LURC and DEP to make their vegetative clearing standards consistent. They also directed that any rule changes either agency made as a result of this directive would be “major substantive” rules – meaning that they would not become effective until the legislature reviewed and approved them. Later that year, the Commission adopted changes to its clearing standards and DEP recommended comparable changes to the Natural Resources Protection Act. The legislature subsequently approved both the LURC rules and the NRPA changes in 2002 with the stipulation that LURC and DEP work with the forest products industry to address that industry’s concerns with the point system that is integral to the clearing standards.

During 2002, LURC, DEP and Maine Forest Service (MFS) staff worked with Maine Forest Products Council (MFPC) representatives and a developer in Western Maine to review the point system and recommend changes as the work group felt appropriate.

*Point system:* In brief, the point system establishes points for different size trees within vegetative buffers. Rectangular plots established within the buffer must contain a certain total number of points. Clearing may occur only if the required points are exceeded in any plot or as otherwise allowed by the rules (limbing of trees, etc) – such clearing must result in retaining at least the minimum number of points in each plot

It was the consensus of the 2002 work group that certain changes to the point system should be made and recommended so to the legislature. Those recommendations were recently considered by the Natural Resources Committee of the Legislature. In considering the work group’s recommendations, the Committee made additional changes of their own which results in the attached recommended changes to the LURC rules.

### Summary of proposed changes

In summary, the proposed changes to the vegetative clearing standards are:

- Plots to which the point system is applied are increased in size from 25 feet by 25 feet (625 square feet) to 25 feet by 50 feet (1250 square feet).
- Because the plot size was doubled in size, the required number of points has been doubled (increase to 24 points per plot in great pond shoreland buffers and 16 points per plot in all other vegetative buffers).



- A new point class was established for trees 8 to 12 in diameter and trees over 12 inches in diameter count for more points, however, no more than 50% of the points may be attributed to trees over 12 inches.
- At least 5 saplings greater than 3 feet in height but less than 2 inches in diameter must be retained in each plot – the point system only applies to trees that are 2 inches or more in diameter.
- The 40% “volume” removal standard is changed to 40% of the “basal area” – a more meaningful manner of measuring amount of vegetation that can be removed.

Also attached is a draft brochure prepared by Sarah Canon of the LURC staff to help explain how the revised clearing rules are to be applied.

### **Staff recommendation**

Staff recommends that the Commission post the attached changes to 10.27, B, Vegetation Clearing, to written public comment for approximately a 30-day period. After the close of the comment period and consideration of any comments, staff will bring a recommendation for final adoption to the Commission.

FWT

Attachments

## **MEMORANDUM**

May 3, 2004

**To:** Commission Members

**From:** Frederick W. Todd, Mgr., Planning and Administration Division, LURC

**Re:** Update on Rulemaking

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We are working on a variety of rule changes on which we want to up-to-date you.

**Vegetation clearing standards:** Elsewhere in this month’s packet is a staff recommendation to proceed to rulemaking on changes to the Commission vegetation clearing standards, Section

Catherine M. Carroll, Director

PHONE: (207) 287-2631  
FAX: (207) 287-7439  
TTY: (207) 287-2213

10.27, B of the Commission's rules. We are proposing these changes because of various legislative directives over the past few years as explained in the cover memo with the staff recommendation.

**Floodplain rules:** A couple of years ago, the Commission directed staff to make changes to its floodplain regulations such that certain development could be allowed within floodplains as a special exception provided the development standards of the National Flood Insurance Program were met. We have attempted to make these changes consistent with the model floodplain ordinance for the organized towns and, as such, these changes have become much more complex than anticipated. These changes are currently being reviewed by staff of the National Flood Insurance Program (NFIP) to insure consistency with that program. We are loath to bring these proposed changes to you until we get a green light from the NFIP staff, since their views may affect the Commission's continued eligibility to participate in the NFIP and, consequently, the eligibility of landowners in the Commission's jurisdiction for flood insurance and mortgages tied to federal loan programs. We hope to bring these proposed changes to you for your consideration in the next few months.

**Dock standards:** The Commission's rules currently allow temporary docks without a permit while permanent docks require a permit by special exception. The distinction between temporary and permanent docks, however, is becoming increasingly blurred such that we feel the need to clarify the difference and the standards for each. We will propose these changes along with the floodplain rules since they both address the appropriateness of development in shoreland areas.

**Statewide forestry standards:** The legislature has directed the Commission to amend its rules to be consistent with the statewide forestry standards, which become effective on January 1, 2006. Our rules must be adopted by October 2005. The overall effect of these rules will be to transfer regulatory authority over timber harvesting and land management road building in shoreland zones from LURC to the Maine Forest Service. We intend to bring these draft rules to you late this year or early next year.

**Aquifers:** Because of the sand and gravel aquifer mapping now available for a large area of the Commission's jurisdiction, we feel that we need to update the means by which we identify and protect significant ground water resources. The Commission established the Aquifer Protection Subdistrict many years ago, but, up until now, has not had the necessary information to apply the zone except in very limited situations. The state's Wellhead Protection Program also needs to be factored into these rule changes. We have only just begun having discussions with persons knowledgeable about aquifers and aquifer mapping, so any recommended rule changes are probably a year away. Once we have a preliminary list of issues, we'll bring this matter to you for discussion before we actually draft any rule changes.

FWT

**MEMORANDUM**

May 3, 2004

**TO:** Commission Members

**FROM:** Donald Cote, Senior Compliance Investigator

**SUBJECT:** Proposed Settlement Agreement for Enforcement Case EC 03-109

Attached is a proposed staff settlement entered into with John Wagner, Jr., Duane A. Wagner, and John G. Thorpe (d/b/a Northwoods Partners) for violations associated with clearing and filling and grading activities on their leased camp lot on Second Wallagrass Lake in St. John Plantation. A local contractor undertook the activity on behalf of the respondents while preparing the site for construction of a proposed seasonal camp pursuant to BP 11597, issued May 28, 2002.

In addition to paying a civil penalty of \$2,000, the respondents have agreed to remove some of the imported fill, including fill placed less than 100 feet from the normal high water mark of Second Wallagrass Lake, and to re-establish vegetative ground cover by August 30, 2004.

Staff believe that this agreement is in keeping with your Compliance & Enforcement Response Policy and request that you ratify the agreement.

Enclosures

xc: EC 03-109

PLEASE NOTE - The Commission will interrupt the agenda for lunch at 12:00 and may adjust the agenda to take items out of order.

## MEMORANDUM

May 4, 2004

**TO:** Commission Members

**FROM:** Billie J. MacLean

**SUBJECT:** Denial of Application for Amendment C to Building Permit BP 8976 by Variance, T16 R 4 WELS, Aroostook County

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### BACKGROUND

The applicant's lot is developed with a pre-Commission, single-story, 24 foot by 36 foot seasonal camp with lake-side stoop and a 10 foot by 20 foot shed. Building Permit BP 8976 and subsequent amendments to Building Permit BP 8976 have authorized a 14 foot by 20 foot camp addition, an L-shaped deck, a 6 foot by 10 foot addition to the shed, and installation of a replacement sewage disposal system.

### PROPOSAL

The applicant now proposes to construct a 30 foot by 40 foot garage. The garage would be set back approximately 180 feet from the normal high water mark of Madawaska Lake, 30 feet from South Shore Road, and 15 feet from the nearest property boundary line.

The applicant seeks a variance to the Commission's minimum road setback requirement. The applicant states that strict compliance with the Commission's minimum road setback would require costly excavation of ledge or the addition of fill material, resulting in a 9 or 10 percent slope for the approach to the garage. The applicant states that this slope would be too steep to be practical.

The Commission's staff visited the applicant's lot in April of 2004 and has located an area for the garage which would be conformance with the Commission's standards.

### REVIEW CRITERIA

Under provisions of Section 10.17,B,1 of the Commission's Land Use Districts and Standards, the minimum setback for residential structures is 50 feet from roadways such as South Shore Road.

Under provisions of Section 10.10 of the Commission's Land Use Districts and Standards, the Commission may grant a variance where the Commission finds that strict compliance with the Commission's rules would cause unusual hardship or extraordinary difficulties because of the following:

- (1.) The access and use needs of a person with a physical disability.
- (2.) Exceptional or unique conditions of topography, access, location, shape, size or other physical features of the site
- (3.) Unusual circumstances that were not anticipated by the Commission at the time the rules and standards were adopted.

- (4.) In order to be granted a variance, under 2 or 3 above, a petitioner must demonstrate that:
- (a.) The land in question can not yield a reasonable return unless a variance is granted;
  - (b.) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - (c.) The granting of a variance will not alter the essential character of the locality; and
  - (d.) The hardship is not the result of action taken by the petitioner or a prior owner or lessee.

## **CONCLUSIONS AND STAFF RECOMMENDATION**

The applicant's proposal does not qualify for a variance to the Commission's minimum road setback requirements under the provisions of Section 10.10 of the Commission's Land Use Districts and Standards. Specifically, the applicant has not demonstrated by substantial evidence that the need for the variance is due to unique circumstances of the property and not to general conditions in the neighborhood. In addition, the applicant has not demonstrated that the land cannot return a reasonable yield unless a variance is granted. The presence or lack of a garage will still allow the existing seasonal camp to yield a reasonable return. Even more so, a smaller garage, or garage located in compliance with the rules will allow the property to return a reasonable yield.

Therefore, staff recommends disapproval of the applicant's proposal for a garage.

CMC/BJM/lp

Enclosures

xc: BP 8976 File

## **MEMORANDUM**

May 4, 2004

**TO:** Commission Members

**FROM:** Billie J. MacLean

**SUBJECT:** Denial of Amendment C to Development Permit DP 4360 by Variance, Monhegan Plt., Lincoln County

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### **BACKGROUND**

The applicant's lot is developed with a lighthouse facility, originally constructed in the early 1800's. The original facility consisted of a lighthouse and a lighthouse keeper's home. A second home was constructed on the property in the mid 1800's to house an assistant lighthouse keeper. Five outbuildings, including the existing garage, chicken coop and sheds, were constructed on the property by 1900. The assistant lighthouse keeper's home and an associated storage building (one of the original five outbuildings) were razed around 1920. All of the other original structures remain on the site, including the lighthouse which is owned by the U.S. Coast Guard. The structures on the applicant's lot are listed on the National Register of Historic Places.

Development Permit DP 4360, issued to the applicant by variance in September of 1996, authorized the reconstruction of the assistant lighthouse keeper's home and associated storage building. The proposed reconstructed home was to be 25 feet by 26 feet with a 14 foot by 20 foot ell and a 6 foot by 16 foot porch, and was to be set back 10 feet from the nearest property boundary line. The main part of the reconstructed home was to be used as an art museum to display art created on Monhegan, with the ell to house archives of historical papers and photographs. The reconstructed storage building was to be 18 feet by 24 feet and was to be set back 4 feet from the nearest property boundary line.

The Maine Historic Preservation Commission recommended approval of the 1996 variance request in order to allow the reconstruction of the buildings in their original locations. They also stated that replicas of the original buildings in locations other than their original locations would have a significant adverse impact of the historic value of the complex in that such replicas would create a false impression of the lighthouse complex's historic appearance.

Subsequent amendments to Development Permit DP 4360 have authorized conversion of a pre-Commission shed to a public bathroom, extension of the covered walkway, installation of second sewage disposal system, and expansion of a pre-Commission garage.

### **PROPOSAL**

The applicant proposes to construct a 13 foot by 19 foot addition onto the previously authorized art museum with ell addition. The addition would be used as additional office space for the curatorial staff. The addition would be set back 8 feet from the nearest property boundary line, of the same size and in the same location as the original porch addition that was razed in the 1920's.

PLEASE NOTE - The Commission will interrupt the agenda for lunch at 12:00 and may adjust the agenda to take items out of order.

The applicant seeks a variance to the Commission's minimum property boundary line setback requirement. The applicant states that strict compliance with the Commission's minimum required setback from its southern property line would cause an unusual hardship in that it would preclude constructing the addition in its original location and therefore make it impossible to maintain the historic and aesthetic integrity of the complex. The applicant has indicated that there is a six foot existing slope immediately adjacent on the north side of the existing art museum limiting expansion away from the property line.

The applicant has submitted letters from both the abutting landowner, Monhegan Associate, Inc. and the Maine Historic Preservation Commission stating that they support the applicant's proposal.

## **REVIEW CRITERIA**

Under provisions of Section 10.17,B,1 of the Commission's Land Use Districts and Standards, the minimum property boundary line setback is 25 feet for nonresidential uses and structures.

Under provisions of Section 10.10 of the Commission's Land Use Districts and Standards, the Commission may grant a variance where the Commission finds that strict compliance with the Commission's rules would cause unusual hardship or extraordinary difficulties because of exceptional or unique conditions of topography, access, location, shape, size or other physical features of the site, that the proposed development is in keeping with the general spirit and intent of 12 M.R.S.A., Chapter 206-A and that the public interest is otherwise protected. In order to be granted a variance, a petitioner must demonstrate, by substantial evidence, that:

- (1) The land in question can not yield a reasonable return unless a variance is granted;
- (2) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- (3) The granting of a variance will not alter the essential character of the locality; and
- (4) The hardship is not the result of action taken by the petitioner or a prior owner or lessee.

## **CONCLUSIONS AND STAFF RECOMMENDATION**

The proposal does not qualify for a variance to the Commission's minimum property boundary line setback requirements under the provisions of Section 10.10 of the Commission's Land Use Districts and Standards. Specifically, the applicant has not demonstrated that strict compliance with the Commission's property boundary line setback requirements creates an unusual hardship. The applicant has not demonstrated by substantial evidence that land cannot return a reasonable yield unless a variance is granted. Even though the property met the criteria and was granted a variance in 1996, changes to our rules in October 2000 added the "reasonable return" language and therefore now make this request not approvable. The presence or lack of an addition to the art museum will still allow the two existing museums and associated structures to yield a reasonable return.

Therefore, the Staff recommends denial of the amendment request of the Monhegan Historical and Cultural Museum for a variance to the property line setback requirement.

BJM/

Enclosures

xc: DP 4360 File

## **MEMORANDUM**

May 4, 2004

**TO:** Commission Members

**FROM:** Billie J. MacLean

**SUBJECT:** Zoning Petition ZP 687, Oxbow Plt., Aroostook County

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### **BACKGROUND AND PROPOSAL**

Co-petitioner, Derek Monson, owns an approximately 104 acre lot (Lot #9) in Oxbow Plt., Aroostook County. The lot is currently undeveloped. The land to the east of Mr. Monson's lot is owned by Lakeville Shores Inc. (Lot #1) and is also undeveloped.

Mr. Monson proposes to rezone approximately 4.2 acres of his 104 acre lot for the purpose of developing the area with a seasonal camp. He proposes to rezone 0.3 acres within 25 feet of the Aroostook River from (P-WL1) Wetland Protection Subdistrict, (P-SL) Shoreland Protection Subdistrict, and (P-RT) Special River Transition Protection Subdistrict to (P-SL) Shoreland Protection Subdistrict and (P-RT) Special River Transition Protection Subdistrict; 2.6 acres between 25 feet and 250 feet of the Aroostook River from (P-WL3) Wetland Protection Subdistrict, (P-SL) Shoreland Protection Subdistrict, and (P-RT) Special River Transition Protection Subdistrict to (P-SL) Shoreland Protection Subdistrict and (P-RT) Special River Transition Protection Subdistrict; and 1.3 acres at distances greater than 250 feet from the Aroostook River from (P-WL3) Wetland Protection Subdistrict to (M-GN) General Management Subdistrict.

The staff of the Land Use Regulation Commission concurrently propose to rezone additional areas within Derek Monson's lot (Lot #9) and an abutting lot (Lot #1), currently owned by Lakeville Shores Inc., to accurately reflect the wetland boundary. No development has been planned for any of these additional areas.

Within 25 feet of the Aroostook River, the staff proposes to rezone 0.1 additional acres of Lot #9 from (P-WL1) Wetland Protection Subdistrict, (P-SL) Shoreland Protection Subdistrict, and (P-RT) Special River Transition Protection Subdistrict to (P-SL) Shoreland Protection Subdistrict, and (P-RT) Special River Transition Protection Subdistrict.

Between 25 feet and 250 feet of the Aroostook River, the staff proposes to rezone 2.2 additional acres of Lot #9 and 0.35 acres of Lot #1 from (P-WL3) Wetland Protection Subdistrict, (P-SL) Shoreland Protection Subdistrict, and (P-RT) Special River Transition Protection Subdistrict to (P-SL) Shoreland Protection Subdistrict, and (P-RT) Special River Transition Protection Subdistrict.



At distances greater than 250 feet from the Aroostook River, the staff proposes to rezone 17.7 additional acres of Lot #9 and 0.65 acres of Lot #1 from (P-WL3) Wetland Protection Subdistrict to (M-GN) General Management Subdistrict.

Overall, 25.2 acres of land are proposed to be rezoned in order to remove the wetland protection subdistrict designation.

## REVIEW CRITERIA

Under the provision of Section 10.15,A,3,b(8) and 10.16,I,3,b(13) of the Commission's *Land Use Districts and Standards*, single-family dwellings are allowed with a permit in a (M-GN) General Management Subdistrict and (P-SL) Shoreland Protection Subdistrict, respectively, subject to the applicable requirements set forth in Section 10.17 of the Commission's rules.

Under the provision of Section 10.16,L,3,b(1) of the Commission's *Land Use Districts and Standards*, single-family dwellings are allowed with a permit in a (P-RT) Special River Transition Protection Subdistrict provided the setback from the normal high water mark is 125 feet.

Pursuant to 12 M.R.S.A., Section 685-A, Subsection 8, no change in district boundaries may be approved, unless there is substantial evidence that:

- A. The change is consistent with the standards for district boundaries in effect at the time; the *Comprehensive Land Use Plan*; and the purpose, intent and provisions of this chapter [12 M.R.S.A., Chapter 206-A, Land Use Regulation]; and
- B. The proposed land use district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

## CONCLUSIONS AND STAFF RECOMMENDATION

1. The proposed rezoning of the following land areas are consistent with the standards for districts and boundaries set forth in Sections 10.15,A, 10.16,I, and 10.16,L of the Commission's Land Use Districts and Standards, and the Commission's Comprehensive Land Use Plan, and does not meet the criteria for designation as a (P-WL3) Wetland Protection Subdistrict:
  - (a.) 19.65 acres from (P-WL3) Wetland Protection Subdistrict to (M-GN) General Management Subdistrict;
  - (b.) 5.15 acres from (P-WL3) Wetland Protection Subdistrict, (P-SL) Shoreland Protection Subdistrict, and (P-RT) Special River Transition Protection Subdistrict to (P-SL) Shoreland Protection Subdistrict and (P-RT) Special River Transition Protection Subdistrict; and
  - (c.) 0.4 acres from (P-WL1) Wetland Protection Subdistrict, (P-SL) Shoreland Protection Subdistrict, and (P-RT) Special River Transition Protection Subdistrict to (P-SL) Shoreland Protection Subdistrict and (P-RT) Special River Transition Protection Subdistrict.

Therefore, Staff recommends that these areas should be rezoned to (M-GN) General Management Subdistrict at distances greater than 250 feet of the river, and remain (P-SL) Shoreland Protection Subdistrict and (P-RT) Special River Transition Protection Subdistrict within 250 feet of the river. Specifically, the new district designations are more appropriate for the management of existing uses and resources within the affected area because the subject area does not contain wetland resources requiring special protection under the Commission's Land Use Districts and Standards, and it meets the purposes, description and land use standards for (M-GN) General Management Subdistrict, (P-SL) Shoreland Protection Subdistrict and (P-RT) Special River Transition Protection Subdistrict for which it is proposed.

CMC/BJM/lp

Enclosures

xc: ZP 687 Fi

## **MEMORANDUM**

May 4, 2004

**TO:** Commission Members

**FROM:** Marcia Spencer-Famous

**SUBJECT:** Staff Recommendation on Request for Public Hearing, Nestle Waters North America, Inc, Development Permit DP 4689, Pierce Pond Twp. and Spring Lake Twp., Somerset County

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### **Request for Public Hearing**

Commission staff received one request for a public hearing from a resident of Highland Plantation, Somerset County, and two requests from individuals using, but not having a primary residence in the area of the project. The public hearing would be in regard to Nestle Waters North America's request for Development Permit DP 4689 for a commercial spring water pumping facility in Pierce Pond Township, Somerset County. The proposed facility would not be a bottling plant, but would transport the water to the applicant's plants in Poland Springs or Hollis, Maine. The proposed activity would involve up to 40 tanker trucks per day using the Long Falls Dam Road, which accesses the site from the south through the town of North New Portland, Lexington Township, and Highland Plantation. The individuals are requesting a public hearing because it would provide a forum for the public to voice their concerns about the increased truck traffic on the Long Falls Dam Road, impacts to water resources of the area, and adverse effects on the Bigelow Preserve, which is located west of the development site.

### **Background**

The Commission's staff has been reviewing Nestle Waters North America's application for Development Permit DP 4689 on a 455-acre parcel in Pierce Pond Township, which is located east of Flagstaff Lake. The proposal also includes an agreement from the Bureau of Parks and Lands to grant an easement to construct a temporary pumping station and a permanent paved access road across 500 feet of State land in abutting Spring Lake Township. The applicant submitted detailed information on the resource analysis conducted during the winter of 2004, including the extent of the aquifer, the area that could be influenced by the pumping, and proposed monitoring.

Outside review of the application was conducted by the Maine Drinking Water Program (DWP); the Maine Department of Inland Fisheries and Wildlife (MDIFW); the Maine Geologic Survey (MGS), the Bureau of Parks and Lands (BPL), the Natural Areas Program; the Maine State Soil Scientist; the Maine Department of Transportation (MDOT); the Somerset County Commissioners; the first assessor of Highland Plantation; and the U.S. Army Corps of Engineers. The MDOT and the Somerset County road engineer stated that the Long Falls Dam Road could accommodate the additional truck traffic. Hydrogeologists at MGS and DWP have reviewed the resource analysis

PLEASE NOTE - The Commission will interrupt the agenda for lunch at 12:00 and may adjust the agenda to take items out of order.

data, and stated that the aquifer can sustain the proposed pumping and is not likely to affect area domestic wells. After adjustments to accommodate concerns, MDIFW approved of the proposed monitoring. BPL expressed no concerns for the effect of the project on surrounding resources. The State review agencies, Highland Plantation's assessors, and the Somerset County Commissioners are in support of the project.

The applicant conducted a well-attended public information meeting held on April 26, 2004 in North New Portland. The primary concerns expressed at the meeting were the increased truck traffic on the Long Falls Dam Road, and the potential for the water withdrawal to adversely impact the surface and ground water resources of the region. At the meeting, the applicant proposed to work with Highland Plantation and North New Portland in regard to safe use of the road, and to conduct a traffic study. The applicant also presented a description of the groundwater resource investigations and the proposed monitoring. Other concerns raised by the public either at the public meeting or over the course of the permit review include noise, lighting, the affect of the activity on surrounding recreational uses of the area, and whether a bottling facility is also planned for the area. Several letters from the public in support of the proposed pumping station have also been received.

### **Review Criteria for a Public Hearing**

Under the provisions of Sections 4.04(5)(a) and 4.05(5)(b) of the Commission's Rules of Practice, interested persons may prepare and submit evidence and argument to the agency and request a hearing on an application. The Commission shall consider all requests for a hearing in a timely manner. Hearings on an application are at the discretion of the Commission unless otherwise required by the Constitution of Maine or statute. In determining whether a public hearing is advisable, the Commission shall consider the degree of public interest and the likelihood that information presented at the hearing will be of assistance to the Commission in reaching its decision.

### **Staff Analysis and Recommendation**

While there is a significant degree of public interest on the development in that numerous members of the public have discussed the application at length with staff, the public information meeting was very well-attended, and as of the writing of this memo three requests for a public hearing were submitted, staff believes that any information presented at a public hearing would not be of further assistance to the Commission in reaching its decision. Specifically, the existing information in the file for the review of Development Permit DP 4689, both supplied by the applicant, review agencies, and the interested parties, is extensive and encompasses the concerns expressed by all parties during the review of the application and after the permit was issued.

Therefore the staff recommends that the Commission not hold a public hearing on the Development Permit DP 4689.

Enclosures

xc: DP 4689 File

Tom Brennan, NWNA  
Chip Ahrens, Woodward and Curran  
Ralph Knoll, BPL  
Dan Locke, MGS  
Steve Timpano, Mark Caron, and Forrest Bonney, MDIFW  
Scott Whitney, DHS  
Jo Dunphy, Highland Plantation first assessor  
Andrea Reichart, North New Portland  
Somerset County Commissioners  
Dave Rocque, Maine State Soil Scientist  
Shawn Mahaney, US Army Corps of Engineers  
Ted Wolfertz, LUR

